

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROWANA RIGGS

Claimant

VS.

THE BOEING COMPANY

Respondent

AND

AMERICAN MANUFACTURERS MUTUAL INS. CO.

Insurance Carrier

Docket No. 223,954

ORDER

Claimant appeals from an Order dated October 22, 1999, wherein Administrative Law Judge John D. Clark awarded claimant's previous counsel attorney fees based on a contingency fee contract between claimant and counsel.

ISSUES

Claimant contends the Administrative Law Judge erred by awarding attorney fees to counsel she discharged during the course of the litigation in this claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the evidence, the Appeals Board concludes the Order for attorney fees based on the contingency fee contract should be reversed and the matter should be remanded to the ALJ for a hearing to determine what attorney fee would be appropriate on a quantum meruit basis.

Claimant entered a contract with the law firm of Snider and Seiwert on June 27, 1997. In return for legal services in connection with her workers compensation claim, claimant agreed to pay counsel 25 percent of the first \$10,000 recovered, 20 percent of the next \$10,000, and 15 percent of all amounts in excess of \$20,000. Counsel then handled the claim through the point of prehearing settlement conference. Counsel had, at that time, obtained a report and impairment rating from Dr. Lynn D. Ketchum. Dr. Ketchum had rated the impairment as 18 percent of the whole body. Claimant had offered to settle the claim based on that rating but respondent had not agreed. After the prehearing settlement conference, claimant terminated counsel's services and proceeded to prosecute the claim pro se. She took the deposition of Dr. Ketchum and handled the regular hearing. The ALJ then entered an Award denying the claim. Claimant filed an appeal and the Board reversed. The Board granted benefits based on the 18 percent rating of Dr. Ketchum.

After claimant terminated their services and before the Award was entered, counsel filed a lien for attorney fees and expenses based on the contingency fee agreement. After the Board granted benefits, the ALJ conducted a hearing on counsel's request for fees and granted the request. At the hearing, counsel presented its fee agreement and advised the ALJ of the total expenses. Counsel did not introduce any evidence of the amount of time it had spent on the claim or other factors which might bear on the quantum meruit rate of services rendered.

K.S.A. 44-536 provides for resolution of dispute regarding attorney fees. The statute authorizes the Director, in this case acting through the ALJ, to resolve such disputes. The ALJ resolved the dispute by awarding the full amount contemplated by the contingency agreement. But the contingency, namely the recovery of benefits, had not occurred at the time claimant terminated counsel's services. Respondent had not agreed to the offer and the Award only occurred after additional deposition, hearing, and appeal. Under those circumstances it is not appropriate to base the fee on the contingency agreement. Counsel is entitled to a fee, but the fee is to be based on a quantum meruit for the reasonable value of services rendered. *Madison v. Goodyear Tire & Rubber Co.*, 8 Kan. App. 2d 575, 663 P.2d 663 (1983).

The record currently does not contain evidence relating the amount of time spent or other factors which might bear on the reasonable value of services rendered by counsel. The Board, therefore, remands this matter to the ALJ for a hearing and additional evidence for the purpose of awarding attorney fees on a quantum meruit basis.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order dated October 22, 1999, should be, and is hereby, reversed and the claim is remanded to the Administrative Law Judge to conduct a hearing and receive additional evidence for the purpose of awarding attorney fees on a quantum meruit basis.

IT IS SO ORDERED.

Dated this ____ day of January 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Rowana Riggs, Pro Se
Joseph Seiwert, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director